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No. 80-1948

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JOAN FISCHER WRIGLEY,

Petitioner,

vs.

WILLIAM WRIGLEY,

Respondent.

On Petition For Writ of Certiorari To The Wisconsin Court of Appeals

BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

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QUESTIONS RESTATED

1. Are the Wisconsin courts required to give full faith and credit to Alabama divorce decrees where the decrees are null and void and entitled to no credit at all under Alabama law and where Alabama law gives spouses, like respondent, standing to raise the invalidity of such divorce decrees in suits to annul a subsequent marriage?

2. Are the Wisconsin courts required to extend full faith and credit to divorce decrees rendered by Alabama courts in sham, *ex parte* proceedings in which the defendant spouses did not participate, in which the jurisdictional fact of domicile was placed in issue but never even adjudicated, and in which all concede the Alabama courts lacked jurisdiction?

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STATEMENT OF THE CASE

Petitioner Joan Fischer Wrigley seeks review of a decision of the state courts of Wisconsin that annulled the marriage between petitioner and respondent William Wrigley. This decision is based on the application of the law of Alabama and established federal principles to a set of unique facts. Because the Petition misstates critical facts and ignores the findings of the Wisconsin courts, a brief restatement of the facts is necessary.

The Devine Marriage and Divorce. Petitioner married Christopher Devine in New Jersey in 1953. In October, 1955, while

residing in New Jersey, petitioner consulted a New Jersey attorney, Arthur Logan, about the best way out of this marriage.[1] This attorney recommended an Alabama divorce (Tr. 127-28).

On November 14, 1955, Devine signed an untitled document which stated that he "accepts service of a copy of the Bill of Complaint heretofore filed" and admitted that petitioner was an Alabama resident (Tr. 60-61). At the time Devine signed this paper—which the Petition (p. 3) erroneously describes as an "answer"—no complaint had been filed and no suit was pending in Alabama or anywhere else (App. 19, Finding 13).

Petitioner and her grandmother went to Montgomery, Alabama shortly after Devine signed the untitled document. On November 16, 1955, petitioner filed a complaint for divorce in the rural Limestone County Court, alleging that she was a resident of Montgomery County, Alabama (App. 19, Finding 11). Devine testified in the Wisconsin court that he has never been in Alabama (Tr. 61-62), and he was not served with process in the Alabama proceeding, either within or without the State of Alabama (App. 19, Finding 14). Contrary to the Petition's misstatement (p. 3), Devine did not file any papers in this proceeding. As the Wisconsin court found, *petitioner* filed the untitled document which Devine had previously signed (App. 19, Finding 12). Before she filed this document, petitioner "designated" an attorney, William Sherrill, as "counsel" for Devine (Tr. 129). Contrary to the Petition's claim (p. 3) that Sherrill represented Devine, the Wisconsin court found that Devine had never met or employed Sherrill and that Sherrill was not Devine's attorney (App. 19, Findings 12 and 13).

On November 18, 1955, a "deposition" of petitioner was filed in the Limestone County Court. On the same day (which was two days after the complaint was filed), the court, without a hearing

[1]Contrary to the Petition's suggestion (p. 3), Logan never represented Devine.

or any testimony, entered a decree purporting to grant a divorce (App. 19-20, Findings 15 and 16).

Petitioner had taken no steps to establish residence in Alabama (App. 18, Findings 9 and 10). She admitted at trial that her only purpose in going to Alabama was to get a "no-publicity" divorce and that she returned to New Jersey immediately after the decree was entered (Tr. 833). Years later, she bragged that she was in Alabama just long enough to get a cup of coffee (App. 20, Findings 17 and 18).

The Dexheimer Marriages and Divorce. On May 26, 1956, five months after the Devine divorce, petitioner married Richard Dexheimer in New Jersey. On the marriage application, petitioner did not answer the question which asked whether she was legally free to marry (PX 6). On advice of her counsel, she and Dexheimer then went to Alabama and went through a second marriage ceremony there on June 1, 1956, six days after her actual marriage (Tr. 16, 177). The sole reason for this second marriage ceremony was that petitioner was aware that her Alabama divorce was of questionable validity, but believed that a marriage ceremony in Alabama might somehow shore up the Devine divorce (App. 4).

After the Alabama marriage ceremony, petitioner and Dexheimer returned to New Jersey. They had three children. In 1964, petitioner left Dexheimer. Although a New Jersey court subsequently granted petitioner leave to file a complaint for divorce in New Jersey[2] and although petitioner then knew her first Alabama "quickie" divorce was of doubtful validity (App. 14),

[2]In July of 1964, petitioner had filed a complaint for separate maintenance and child custody in a New Jersey court. Dexheimer filed an answer charging that she had committed adultery with a number of men and had squandered his money (PX 5). On November 9, 1964, the New Jersey court awarded Dexheimer custody of their three children and granted petitioner leave to file for divorce.

petitioner decided to obtain a second Alabama divorce in order to avoid adverse publicity (App. 20-21, Findings 21-24).

On March 9, 1966, petitioner used two Alabama attorneys, Donald McKay[3] and Talmadge Fambrough, to file a complaint for divorce against Dexheimer in St. Clair County, Alabama (App. 23, Finding 34). The complaint ignored their actual marriage in New Jersey on May 26, 1956, and alleged that the Dexheimers were married on June 2, 1956, in Alabama. The complaint also alleged that petitioner had been a "resident citizen" of Alabama for more than one year and that Dexheimer abandoned her "bed and board while complainant and respondent were domiciled in the State of Alabama." The Wisconsin courts found that petitioner was, at the time the complaint was filed, fully aware that each of these allegations was false (App. 21, Findings 25 and 26).

Dexheimer testified in the Wisconsin court that he had never resided in Alabama (Tr. 35, 40-41), and he was not served with process in this "case," either within or without the State of Alabama (App. 21-22, Finding 27). Prior to the filing of the complaint, he had signed a so-called "Acceptance of Service, Answer and Waiver" in New Jersey, which petitioner later filed in the Alabama court.[4] Unlike Devine, who admitted the false allegation of Alabama residence in his untitled paper, Dexheimer denied petitioner's allegation of residence and demanded strict proof. Petitioner did not "designate" counsel for Dexheimer, and Dexheimer did not appear in the proceeding or, contrary to the Petition's assertion (p. 4), "file any papers" (App. 21-22, Finding 27).

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[3]Donald McKay was at that time suspended from the practice of law in Alabama because of his participation in the sale of quickie divorces to nonresidents, but was appealing his suspension.

[4]Contrary to petitioner's assertion (Pet. p. 4), Dexheimer did not "file" the paper he signed. Because Dexheimer was not in Alabama and was not represented by even token Alabama counsel, it is obvious that all the papers were filed by petitioner's counsel.

On March 9, 1966, the complaint, the paper signed by Dexheimer, and a "deposition" were filed in the St. Clair County Court. This "deposition" was not sworn to, and those portions of the form providing for certification on oral examination, identification of the witness and the place of deposition are entirely blank (App. 22, Findings 28 and 30). That same day, Judge French O. Whitten of the St. Clair County Court signed a decree purporting to dissolve petitioner's Alabama marriage to Dexheimer. Although Dexheimer's paper had denied that either party was domiciled in Alabama and demanded strict proof, no testimony was taken in court, no hearing occurred, and the decree made no finding of residence or jurisdiction over the subject matter (App. 22, Finding 29).

The St. Clair County Divorce Mill. The uncontroverted evidence at trial showed that Judge Whitten had operated a corrupt divorce mill in St. Clair County, Alabama from 1965, when he was elected, to 1970, when he was removed from office. It had been Judge Whitten's practice to sign any decree that attorney Fambrough prepared for him. Judge Whitten never made any inquiries into domicile or even purported to follow judicial procedures, delegating this power to attorney Fambrough. Judge Whitten accommodated lawyers by meeting them 24 hours a day, signing papers anytime and anywhere—including lounges, bars, and highways (Tr. 422-27; DX 3).

Whitten and Fambrough were thereafter investigated for their roles in the sale of quickie divorces to nonresidents of Alabama (App. 23, Findings 34 & 35; PX 15). In 1968, Fambrough was suspended from the practice of law, the Dexheimer case having been specifically cited as one of the grounds for his suspension (PX 62). In 1970, Judge Whitten was convicted of mail fraud for his sales of divorces to nonresidents of Alabama and was sentenced to federal prison (App. 23, Finding 35).

The Wisconsin courts found that petitioner Joan Wrigley "definitely" knew that these Alabama divorces were shams and of

questionable validity *before* her Dexheimer divorce in 1966 (App. 14-15, 34-35). The Wisconsin courts further found that respondent Wrigley had neither known nor had reason to know of the invalidity of petitioner's prior divorces until shortly before he filed his annulment complaint (App. 15, 34).

The Wisconsin Court Proceedings. On June 4, 1976, respondent William Wrigley filed a complaint to annul his marriage to petitioner in the Circuit Court of Walworth County, Wisconsin, where the parties both resided.[5] He brought this complaint under a Wisconsin statute (Wis. Stat. §247.02(3) (1976 Stat.)) which authorizes Wisconsin courts to grant annulments if a spouse has a prior husband living from whom she is not divorced.[6] On the basis of the foregoing facts, the Circuit Court of Walworth County held that neither the Devine divorce nor the Dexheimer divorce are entitled to full faith and credit in a suit for an annulment and that respondent Wrigley has a right to have his marriage to petitioner annulled. The Court issued an opinion on November 21, 1978 and entered its Findings and Judgment of Annulment on December 21, 1978.

The Circuit Court's decision was based on a painstaking analysis of the law of Alabama (App. 11-14) and of the principles under the Full Faith and Credit Clause (App. 8-11) and on the court's careful application of the law to the specific facts of this case.

The Circuit Court held that respondent had standing under Alabama law to raise the invalidity of petitioner's two prior Alabama divorces in an annulment proceeding and that, because

[5]Both the Circuit Court of Walworth County, Wisconsin, and the Circuit Court of Cook County, Illinois, have ruled that petitioner and respondent were each then Wisconsin residents.

[6]After the present case was filed, petitioner brought three separate suits for divorce in the Circuit Court of Cook County, Illinois, and one suit for divorce in the United States District Court for the Northern District of Illinois. She also counterclaimed for divorce in the Circuit Court of Walworth County, Wisconsin.

respondent was unaware of the fraud petitioner had perpetrated, the marriage between petitioner and respondent could be annulled if *either* prior Alabama divorce was void (App. 11-14). Applying Alabama law, the court found, first, that there were five separate reasons why the Dexheimer decree was "void on the face of the record" under Alabama law (App. 13; App. 25, Conclusions of Law 5 and 6):

> (1) the fact there was a jurisdictional defect on the face of the record because the Alabama court failed to make a finding of residency or jurisdiction in the decree even though Dexheimer's paper had placed residency in issue;
>
> (2) the fact petitioner's deposition was not sworn to and her purported deposition was not taken in open court, so that there was absolutely no evidence to support a decree of divorce;
>
> (3) the false allegation in the complaint as to where and when the parties were married—which meant that on the face of the record the decree had "dissolved" a superfluous Alabama marriage between the petitioner and Dexheimer, but not their actual New Jersey marriage;
>
> (4) the admittedly false allegation of residency in the complaint; and
>
> (5) the admittedly false allegation in the complaint that Dexheimer abandoned petitioner's bed and board in the State of Alabama.

Second, the Circuit Court held, in any event, that under the Alabama rule of *Hartigan* v. *Hartigan*, 272 Ala. 67, 128 So.2d 725 (1961), *both* the Dexheimer and Devine decrees must be treated as "void on their face" because petitioner's admissions and the testimony of petitioner, Dexheimer, and Devine in the Wisconsin court conclusively established that neither petitioner, Dexheimer, nor Devine had ever been residents of Alabama (App. 11-12; App. 25-26, Conclusions of Law 6 and 7).

Third, the Circuit Court held that, whatever the validity of the decrees in Alabama, the Wisconsin courts were not required

to give the decrees full faith and credit. The Circuit Court found as a fact that neither Devine nor Dexheimer had participated in the Alabama proceedings or had been personally served in Alabama and concluded that such *ex parte* decrees are not, under the decisions of this Court, entitled to full faith and credit (App. 25, Conclusions of Law 3 and 4; *see* App. 8-11). The court further recognized that to give *res judicata* effect to the Dexheimer decree's nonfinding of jurisdiction would have made a mockery of the concept of *res judicata*, for domicile had been placed at issue in that proceeding, but never litigated or adjudicated (*See* App. 13; App. 25).

The Wisconsin Court of Appeals affirmed the Circuit Court's decision in an unpublished opinion. The Wisconsin Supreme Court denied further review.

Contrary to petitioner's suggestion (Pet. p. 7), the Wisconsin courts' decision does not and could not affect the legitimacy of her children, all of whom are adults. In any event, such a decision could not affect the legitimacy of any children because statutes are in effect in each of the states with a possible interest in this proceeding—and elsewhere—that declare that children from marriages that are annulled are *legitimate. See, e.g.*, Wis. Stat. §245.36 (1976); New Jersey Stat. Ann. 9:i5-2 (1976); Ill. Rev. Stat., ch. 40, §303 (1979); Uniform Marriage and Divorce Act, §208(d) (National Conference of Commissioners on Uniform State Laws, 1973).

REASONS FOR DENYING THE PETITION

This case does not present any federal questions of national importance. First, the two Alabama decrees are nullities under Alabama law, and Alabama law gives a spouse standing to challenge such decrees in annulment proceedings. Because the Full Faith and Credit Clause does not require Wisconsin to give a

divorce decree any greater effect than it would have in Alabama, the decision below is thus supported by an independent and adequate state ground. Second, in any event, the Wisconsin courts' conclusion that the Alabama decrees are *ex parte* decrees that any state may challenge merely represents the application of established criteria under the Full Faith and Credit Clause to the unique facts of this case. The Petition is challenging the factual findings of the Wisconsin courts, not raising any important questions of law.

I. The Judgment Of Annulment Is A Correct Application Of Alabama Law.

Despite the contrary suggestion in the Petition (pp. 7-12), it is well settled that the State of Wisconsin can only be required to give the Alabama decrees "the same credit, validity, and effect" which they have in Alabama, *see Williams* v. *North Carolina*, 317 U.S. 287, 293-94 (1942), and that a Wisconsin court is free to reexamine any divorce that can "be attacked for lack of jurisdiction by parties actually before the Court or strangers in the rendering state." *Johnson* v. *Muelberger*, 340 U.S. 581, 589 (1951). The decisive considerations here are that the Dexheimer decree and the Devine decree are both nullities under Alabama law and that Alabama law gives a spouse standing to raise the invalidity of his or her spouse's prior divorce in an annulment proceeding.

A. The Decrees Are Nullities Under Alabama Law.

There are two related circumstances in which Alabama divorce decrees are held to be invalid under Alabama law and subject to collateral attack. Both are present here. First, it is the law in Alabama that when a divorce judgment is void "on the face of its own record," the decree "is a nullity, and [a] court, on motion of a stranger, may purge the records of the court of such void and impertinent matters." *Aiello* v. *Aiello*, 272 Ala. 505, 508, 133 So.2d 18, 20 (1961); *accord*, *Yerger* v. *Cox*, 281 Ala. 1, 5, 198

So.2d 282, 286 (1967); *Weisner* v. *Weisner*, 282 Ala. 626, 627, 213 So.2d 685, 686 (1968); *see Hartigan* v. *Hartigan*, 272 Ala. 67, 72, 128 So.2d 725, 729 (1961) (and cases cited). Here, the Wisconsin court held, for the reasons already stated, that the putative Dexheimer divorce decree was void on the face of the record (App. 25, Conclusions of Law 5).

Second, the Alabama Supreme Court has consistently held, in a line of cases beginning with *Hartigan* v. *Hartigan*, 272 Ala. 67, 128 So.2d 725 (1961), that where both parties to a prior decree admit facts which show the decree is invalid for lack of jurisdiction, then "the case is similar to one wherein the judgment is void on its face," and the decree is therefore "subject to collateral attack." 272 Ala. at 73; 128 So.2d at 730; *see also Shapiro* v. *Shapiro*, 280 Ala. 115, 118, 190 So.2d 548, 550 (1966); *Weisner* v. *Weisner*, 282 Ala. 626, 628, 213 So.2d 685, 686 (1968).[7] Indeed, the court in *Hartigan* v. *Hartigan* explicitly held that such Alabama divorce decrees are "void for want of jurisdiction of the subject matter in Alabama," and "*not entitled to full faith and credit in other jurisdictions.*" 272 Ala. at 75, 128 So.2d at 733 (emphasis added). Thus, in the cases in which parties to an Alabama divorce have admitted, in proceedings in other states, that they were never residents of Alabama, the courts have applied *Hartigan* and denied the Alabama decrees full faith and credit. *See McLean* v. *Grabowski*, 99 N.J. Su. 209, 239 A.2d 35 (1968); *Donnell* v. *Howell*, 257 N.C. 175, 125 S.E.2d 448 (1962). Because Devine, Dexheimer, and petitioner all testified that they had never been Alabama residents and that the Alabama courts had never had jurisdiction, the Wisconsin court held, in accordance with all the reported decisions, that both the Devine decree and the Dexheimer decree were void under Alabama law and not entitled to full faith and credit (App. 25-26, Conclusions of Law 6 and 7).

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[7]Contrary to the Petition's implication (p. 13), *Weisner* expressly reaffirmed *Hartigan*. *See* 282 Ala. at 628; 213 So.2d at 686.

B. Respondent Wrigley Has Standing To Raise The Invalidity Of The Decrees In A Suit For An Annulment.

Contrary to petitioner's argument (pp. 13-14), a spouse has "standing" under Alabama law to raise the invalidity of a wife or husband's prior divorce decrees in an annulment action. Petitioner has misconceived both the law of Alabama and the Wisconsin courts' holding.

The Alabama Supreme Court has consistently held that the validity of a spouse's prior divorce may be raised collaterally in an action for annulment. *Smith* v. *Smith*, 247 Ala. 213, 23 So.2d 605 (1945); *Aiello* v. *Aiello*, 272 Ala. 505, 510-512, 133 So.2d 18, 22-24 (1961); *see Yerger* v. *Cox*, 281 Ala. 1, 198 So.2d 282 (1967). Under Alabama law a husband has a right to an annulment where, as here, his wife's earlier divorce is void, and where, as here, the second husband was unaware of the fraud perpetrated on the Alabama court and acted with due diligence. *Aiello* v. *Aiello* makes this explicit. There, Mr. Aiello had brought an action (1) to set aside Mrs. Aiello's prior quickie divorce and (2) to annul his marriage to her on the ground she had not been free to marry him because of the invalidity of the divorce. Although the court held that Mr. Aiello had no right to set aside the *decree*, *see* 272 Ala. at 510-511, 133 So.2d at 21-22; *accord*, *Yerger* v. *Cox*, 281 Ala. 1, 198 So.2d 282 (1967); *Weisner* v. *Weisner*, 282 Ala. 626, 213 So.2d 685 (1968), the court squarely held in *Aiello* that the *marriage* would be *annulled* if Mr. Aiello could prove due diligence in bringing suit. *Aiello*, *supra*, 272 Ala. at 510-512, 133 So.2d at 22-24.[8]

[8]The law of Alabama, in short, gives persons like William Wrigley a legal right to annul a marriage if his spouse's prior divorce is void. Although petitioner has not challenged this doctrine of Alabama law, there is no substance whatever to her implication (pp. 13-14 n. 5) that this doctrine of Alabama law does not protect substantial interests. Quite apart from the State's interest in preventing fraud, the fact is that if the void character of a prior divorce could not be raised in an annulment

(Footnote continued on following page)

Indeed, because the law of Alabama is so clear on this point, every state court that has entertained an annulment action based on the invalidity of an Alabama divorce decree has agreed with the Wisconsin court and held that the spouse's prior divorce may then be challenged collaterally. *See, e.g., Gerard* v. *Distefano*, 84 N.J. Su. 396, 202 A.2d 220 (1964);[9] *Cole* v. *Cole*, 221 Ga. 171, 143 S.E.2d 637 (1965); *Parish* v. *Parish*, 50 Misc. 2d 827, 271 N.Y.S.2d 792 (1966).[10]

The Petition's argument (p. 13) that respondent Wrigley lacks standing under Alabama law to seek to set aside the *prior divorce decrees* misses the point. Respondent did not attempt to

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(Footnote continued from preceding page)

action, persons like respondent would be in the wholly untenable position in which his wife and her former husband could void the earlier divorce (and hence respondent's marriage) by both admitting in open court that there had been no jurisdiction to enter the earlier decree. *See Hartigan* v. *Hartigan, supra.*

[9]The New Jersey court's description of Alabama law (84 N.J. Su. at 402-403, 202 A.2d at 224) in *Gerard* is illustrative:

> "Under Alabama decisional law, collateral attack by a stranger to the proceedings is permitted. The Alabama Supreme Court decision in the 1945 case of *Smith* v. *Smith*, 247 Ala. 213, 23 So.2d 605, explicitly held that in a husband's action for annulment, the validity of his wife's divorce from her former husband could be raised collaterally in the pleadings and by argument of plaintiff's counsel. Again, in 1961, that court permitted a collateral attack by a husband against a decree obtained by the wife against her former husband. *Aiello* v. *Aiello* , 272 Ala. 505, 133 So.2d 18."

[10]The cases from other jurisdictions cited in the Petition (p. 14) are inapposite because none involved annulment actions. *Alikonis* v. *Alikonis*, 36 Ill.App.3d 259, 343 N.E.2d 161 (1976), was an alimony modification hearing; *Kingdon* v. *Foster*, 238 Ga. 37, 230 S.E.2d 855 (1976), was an action to enjoin a widow from administering her husband's estate; *Donner* v. *Donner*, 302 So.2d 452 (D.C. App. Fla. 1974), was an action for specific performance of a contract to make a will; and *Tippin* v. *Tippin*, 148 Conn. 1, 166 A.2d 448 (1960), was an action to modify child custody. Moreover, the respondent spouse participated in each of these cases.

set aside either the Dexheimer or the Devine decree and the Wisconsin courts explicitly stated (App. 14) that its judgment of annulment had no effect on those decrees. All the Wisconsin courts held was that—as *Aiello* v. *Aiello*, *supra* and *Smith* v. *Smith*, *supra* recognize—respondent had a right to *annulment*, whether or not he had standing to have the prior *decrees* set aside. Each of petitioner's citations[11] (p. 13) present the *different* question of when a spouse has standing to *set aside* a prior decree.

Furthermore, in *Williams* v. *North Carolina*, 325 U.S. 226, 230 (1945), this Court held that a stranger to an *ex parte* divorce always has standing to challenge the decree, where, as here, the forum state permits the challenge. The trial court here found that both Alabama divorces were *ex parte*. Therefore, respondent has standing under *Williams*. *See Trager* v. *Trager*, 38 App. Div. 2d 719, 329 N.Y.S.2d 452 (1972); *Jackson* v. *Jackson*, 274 App. Div. 43, 79 N.Y.S.2d 736 (1948).

II. The Wisconsin Courts' Decision That The Two Alabama Decrees Are *Ex Parte* Decrees And Not Entitled To Full Faith And Credit Is A Correct Application Of Established Federal Standards.

Second, even if the invalidity of the Alabama decrees could not be raised collaterally under Alabama law, the Wisconsin courts' decision is a correct application of this Court's decisions under the Full Faith and Credit Clause to unique facts. Because petitioner's challenge is based on her disagreement with the

[11]Petitioner cites *Weisner* v. *Weisner*, 282 Ala. 626, 213 So.2d 685 (1968) (involving a direct challenge to a decree, *not* an annulment of a subsequent marriage); *Yerger* v. *Cox*, 281 Ala. 1, 198 So.2d 282 (1967) (same), and those pages from *Aiello* (272 Ala. at 510-511; 133 So.2d at 22) that dealt with standing to set aside a decree. These citations therefore do not support petitioner's position. Furthermore, because each recognizes that, under Alabama law, *anyone* has standing to set aside a decree where, as here, the decree is void on its face, *see Weisner*, 282 Ala. at 627, 213 So.2d at 686; *Yerger*, 281 Ala. at 5, 198 So.2d at 286, petitioner's authorities are further evidence that the Wisconsin courts' decision is correct.

Wisconsin courts' factual findings, there is no reason or basis for reviewing the Wisconsin courts' conclusion.

Under the Full Faith and Credit Clause, this Court has held there is a distinction between "bilateral decrees," where both spouses participated in traditional adversary proceedings, and "*ex parte* decrees" where the defendant spouse neither participated in such proceedings nor was personally served with process in the state that rendered the decree. A bilateral decree is generally entitled to be given the same full faith and credit as it is given in the rendering state, *see Johnson* v. *Muelburger*, 340 U.S. 581 (1951); *Coe* v. *Coe*, 334 U.S. 378 (1948); *Sherrer* v. *Sherrer*, 334 U.S. 343 (1948). However, because it would be "intolerable" to permit one court's "finding" of domicile to "foreclose all states" from protecting their social interests when no traditional adversary proceedings have occurred, it is well settled that *ex parte* decrees may be collaterally attacked if the rendering state is found to have lacked subject matter jurisdiction because neither party was in fact domiciled there. *Williams* v. *North Carolina*, 325 U.S. 226, 232 (1945); *accord*, *Rice* v. *Rice*, 336 U.S. 674 (1949).

The trial court concluded that the two Alabama decrees were *ex parte* decrees because it found as a fact that neither Dexheimer nor Devine appeared or participated in either proceeding, but merely signed a purported waiver in advance of the filing of the complaint. The Wisconsin courts further relied on the fact that the Alabama decrees were known to be a sham by petitioner and that, particularly because the St. Clair County judge signed whatever decrees petitioner's two lawyers prepared and did not conduct hearings or inquire into domicile, the Alabama proceedings bore no resemblance to traditional judicial proceedings.

The principal basis for the petitioner's claim that the Federal Constitution required Wisconsin to honor both Alabama decrees is that she disagrees with the Wisconsin courts' findings that neither Devine nor Dexheimer participated in traditional adver-

sarial proceedings in Alabama. She repeatedly asserts (*see, e.g.*, Petition, Questions Presented and pp. 3-4) that Devine and Dexheimer filed papers in Alabama, that Devine was represented by an attorney in Alabama, and that both thus "appeared" and "participated" in traditional bilateral proceedings. Quite apart from the fact the trial court's contrary findings were compelled by the uncontroverted evidence, there is no reason for this Court to review a state court's findings of fact.

Petitioner also argues (p. 10) that the Wisconsin court was required to give the Alabama decrees full faith and credit because both Devine and Dexheimer had notice of the proceedings before they were filed and thus had every opportunity to litigate domicile in traditional adversarial proceedings. This argument is flatly inconsistent with *Williams* v. *North Carolina*, 325 U.S. 226 (1945) and *Rice* v. *Rice*, 336 U.S. 674 (1949). *Williams*, for example, involved a divorce decree that had been entered in Nevada after a defendant spouse had been personally served with process in North Carolina, but had not appeared or participated. There, the defendant spouses had undeniably had "notice of the proceedings and an *opportunity* to be heard," *see* Petition, p. 10 (emphasis in original). However, this Court nonetheless held that the Nevada decrees were not entitled to full faith and credit and that North Carolina could constitutionally apply its bigamy laws to the Nevada plaintiffs who had remarried. Because the Full Faith and Credit Clause constitutionalizes the doctrine of *res judicata* and because it affects the power of states to vindicate their fundamental interests, this Court reasoned that the Clause should not apply unless there has been an actual adjudication in traditional judicial proceedings in which both parties participate or in which the defendant spouse is served in the rendering state. The mere consent of the parties to the foreign state's jurisdiction is not sufficient to bar a state like North Carolina or Wisconsin from applying its domestic relations laws to its residents. Accordingly, every court that has considered the issue has agreed with Wisconsin and

held that purported waivers in anticipation of litigation are not "participation" which renders a divorce bilateral. *See Guerieri* v. *Guerieri*, 75 N.J. Su. 541, 183 A.2d 499 (1962); *Gherardi De Parata* v. *Gherardi De Parata*, 179 A.2d 723 (Mun. Ct. App. D.C. 1962); *Pelle* v. *Pelle*, 229 Md. 160, 182 A.2d 37 (1962).[12]

And no court has even suggested, much less held, that the Federal Constitution requires that full faith and credit be afforded "judgments," like the Devine and Dexheimer decrees, which are shams that were entered by divorce mills in "proceedings" that do not remotely resemble traditional adjudicatory proceedings, and which the party defending the judgment *knew* was a sham *before* she obtained it. Such decrees are simply not the product of a "judicial proceeding" within the meaning of Article IV of the Constitution.

Petitioner's reliance (pp. 9-10) on *Cook* v. *Cook*, 342 U.S. 126 (1951), is misplaced. Contrary to her argument, this Court did not there require the Vermont court to give full faith and credit to the Florida divorce decree. *Cook* held only that, *in the absence of evidence to the contrary*, it is presumed that the respondent spouse participated in judicial proceedings in the foreign tribunal. This is a *rebuttable* presumption, and this Court there remanded the case and held that if it were established on remand that "the defendant spouse had neither appeared nor been served in Florida," the Vermont court could deny the decree full faith and credit. 342 U.S. at 128. Here, the trial court found that this presumption had been "overcome by the clear evidence in the case" (App. 11).

[12]There is no substance to petitioner's suggestion (p. 11) that *Williams* v. *North Carolina* and its progeny were overruled *sub silento* in *D. H. Overmyer Co.* v. *Frick Co.*, 405 U.S. 174 (1972). *Overmyer* is not a Full Faith and Credit Clause case. It did not hold that parties may, by a purely private agreement, confer *subject matter* jurisdiction on a court of a foreign state and deny the right of the State of the parties' residence to apply its laws where, as here, there was no adjudication and the foreign state concededly lacked jurisdiction.

Finally, to apply full faith and credit to the Dexheimer decree would stand the clause and the corollary doctrine of *res judicata* on its head, even under petitioner's theory. Dexheimer did *not* consent to Alabama jurisdiction. The paper he executed before the suit was filed *denied* the Alabama court's jurisdiction and demanded strict proof. However, no testimony was taken; no hearing occurred; no "strict proof" was submitted, and the decree does not adjudicate the jurisdictional fact of domicile. No litigation having occurred, there is no basis for holding the decree is entitled to *res judicata* effect. For all the reasons stated, established principles and judicial integrity require that this decree and the Devine decree be treated as the shams they are.

CONCLUSION

The Wisconsin courts' decision represents an application of Alabama law and established federal principles to the particular facts of this case. The legal principles applied by the Wisconsin courts are consistent with every other reported decision that has considered the questions of federal law and Alabama law that are raised. Moreover, the facts of this case are *sui generis*: there is no other reported decision in which a litigant obtained one divorce decree and then, with knowledge it was a sham and invalid, obtained a second such decree. For the reasons stated, the Petition should be denied.

Respectfully submitted,

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